RESPONSE REQUESTED

ORIGINAL

Supreme Court, U.S.
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NO. 92-1678

IN THE SUPREME COURT OF THE

UNITED STATES

STATE OF ALABAMA,

PETITIONER

VS.

TRACY MONIQUE CALDWELL,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT AND
COURT OF CRIMINAL APPEALS OF ALABAMA

RESPONSE OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

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AND

D. KEVAN KELLY

ATTORNEYS FOR RESPONDENT

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STATEMENT OF FACTS

For purposes of this Response to Petition for Writ of Certiorari, Respondent adopts the Statement of the Facts as set out in the Petition for Writ of Certiorari. Respondent, however, reserves the right to expand the facts and restate the facts of the case if a brief on the merits is required to be submitted.

SUMMARY OF THE ARGUMENT

This case does not present an issue for which a Writ of Certiorari should be granted. The decision of the Alabama Courts is supported by provisions of the Alabama State Constitution and on separate State law grounds. Further, the decision of the Alabama Courts is consistent with this Court's recent rulings and with the recent holdings of the Eleventh Circuit Court of Appeals. There are no conflicts with the controlling decisions of this Court as alleged by the State. This case does not present questions which should be addressed by this Court.

ARGUMENT

I. THE ALABAMA COURT'S DECISION IS SUPPORTED BY STATE LAW AND THE ALABAMA STATE CONSTITUTION AND THEREFORE, NO FEDERAL CONSTITUTIONAL QUESTION NEED BE ADDRESSED.

The State of Alabama has it's own constitutional provisions on prohibition against self incrimination and right to counsel. It also has it's own requirement of due process.

> Rights of persons in criminal prosecutions generally; self incrimination; due process of law; right to speedy, public trial; change of venue.
>
> That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; and to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf, if he elects to do so; and in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and he shall not be compelled t give evidence against himself, nor be deprived of life, liberty, or property, except by due process of law; but the legislature may, by general law, provide for a change of venue at the instance of the defendant in all prosecutions by indictment, and such change of venue, on application of the defendant, may be heard and determined without the personal presence of the defendant so applying therefor, provided that at the time of the application for the change of venue, the defendant is imprisoned in jail or some other legal place of confinement.

Article I, Section 6, CONSTITUTION OF ALABAMA OF 1901

Obviously, a State can grant greater protections and rights to it's citizens than those granted by the federal

been carried over from cases arising even before Alabama's current Constitution. Brister v. State, 26 Ala. 107 (1855).

Further, the inquiry into the mental abilities of the arrestee was determined, under state law, to be a proper consideration in determining the voluntariness of a statement. Hines v. State, 384 So.2d 1171 (Ala.Crim.App.), cert denied, 384 So.2d 1184 (Ala. 1980). In Hines, the Alabama Court of Criminal Appeals held that any suspect of a crime is guaranteed the right to assistance of counsel and the right to remain silent during in-custody police interrogation not only under the United States Constitution, but also under the Alabama State Constitution. Hines is a very similar case to this one in that the defendant was mentally retarded. The Alabama Court determined that "the most important and controlling factor to be considered in the totality of the circumstances is the defendant's mental deficiency." Hines, supra, at 1181.

It is most interesting to note that the Alabama Court of Criminal Appeals bases it's opinion primarily on Alabama case law precedent. Only one federal case, that of United State v. Sims, 719 F.2d 375 (11th Cir. 1983), cert. denied, 465 U.S. 1034 (1984) is cited in the State Court 's opinion. This decision was made based on Alabama Constitutional and decisional law.

II. THE DECISION BY THE ALABAMA STATE COURTS IN THIS CASE IS CONSISTENT WITH THE RECENT CONTROLLING DECISIONS OF THIS COURT.

This Court has held that the inquiry into the admissibility of a statement alleged to have been given in a situation requiring the Miranda warnings is a two-part inquiry.

> The inquiry has two distinct dimensions. (Citations Omitted) First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free ad deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension by a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421 (1986).

This analysis is, of course, similar to that required under Alabama law. The State argues that only the first part of this test need ever be applied and that if Miranda is given and the arrestee gives some indication that he or she wants to talk anyway, then the statement subsequently given by the arrestee is admissible. The second part of the test announced and followed by this Court is totally ignored in the State's argument.

Of course, the underlying principles of the Miranda decision include the reality that custodial interrogation is, by it's very nature, coercive. This is the reason that

this Court has required certain, definite and specific warnings to be given to an arrestee before questioning. This Court recently cited with favor its earlier holding that "coercion may be mental as well as physical". Arizona v. Fulminante, 111 S.Ct. 1246 (1991), citing Blackburn v. Alabama, 361 U.S. 199, 204 (1960).

This Court also recently reaffirmed that the "totality of the circumstances" surrounding a confession must be examined to determine the voluntariness of the confession. Arizona v. Fulminante, supra. This is precisely the test used by the Alabama Court of Criminal Appeals in this case.

The Alabama Courts determined that the trial court made a finding of fact based upon the observation of the Defendant, the conflicting testimony of experts and all the circumstances surrounding the statements given by Ms. Caldwell. The State concedes here, as it did in the State courts below, that the finding of fact that Ms. Caldwell did not understand her Miranda rights is a valid decision delegated to the trial court. State's Petition for Certiorari, page 17.

The mental capacity of an accused has always been recognized by this Court as a valid consideration in determining the voluntariness of a statement. Blackburn v. Alabama, 361 U.S. 199 (1960); Fikes v. Alabama, 352 U.S. 191 (1957). The Eleventh Circuit Court of Appeals has held that expert testimony should be admissible under Rule 702 of the

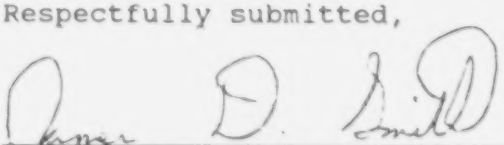
Federal Rules of Evidence to explain how mental deficiency may effect the susceptibility of an accused to confess to a crime. United States v. Roark, 753 F.2d 991 (11th Cir. 1985). The procedure to be followed by the federal courts in determining the admissibility of a statement also requires an inquiry into many factors, including whether Miranda warnings were given. 18 U.S.C. Section 3501.

The mental incapacity of Ms. Caldwell was found, in this case, to prevent her from understanding the Miranda warnings. The trial court merely took the next logical step and ruled that she could not "knowingly and intelligently" waive what she could not understand. The result was that the presumption of the involuntariness of the confession was not overcome by the State. This logical and obvious chain of reasoning does not conflict with this Court's controlling decisions. On the contrary, the trial court's decision is consistent with the law as decided by this Court.

CONCLUSION

While there are many additional issues to be addressed should this Court decide to grant the State of Alabama's Petition for Writ of Certiorari, those issues need not be reached at this point. The Writ should be denied since this case does not present significant federal Constitutional questions. The decisions of the Alabama courts below are consistent with both the Constitution and the case law of the State of Alabama. The decisions below are also consistent with the recent controlling decisions of this Court. Therefore, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that I have this day served the State of Alabama Attorney General's Office and the Tuscaloosa County District Attorney's Office in the foregoing matter by depositing in the United States mail a copy of the same properly addressed and with adequate postage affixed thereto.

This 8th day of July, 1993.

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Hon. William K. Suter, Clerk
Supreme Court of the United States
Supreme Court Building
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Washington, DC 20543

RE: 92-1678
Alabama v. Caldwell, Tracy

Dear Mr. Suter:

Enclosed is an original and one copy of a Motion to Proceed on Appeal in Forma Pauperis, Affadavit of my client, and a brief in response to the State of Alabama Petition for Write of Certiorari. Upon the information obtained from your office, I have followed Rule 39 as my client is indigent and I was appointed to represent her through the Circuit Court of Tuscaloosa County, Alabama.

Should I have made errors in following the procedures of Rule 39, I ask that I be contacted. This is my first opportunity to respond to the Supreme Court and I hope to be as accurate as possible.

Thank you very much for the help your office has provided in preparing this material.

Sincerely,

James D. Smith

JDS/cs